

Exhibit 8



DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

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JANUARY 4, 2012

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SUBJECT: Requirements for 2012-2013 Arkansas River Replacement Plans for Pre-1986 wells

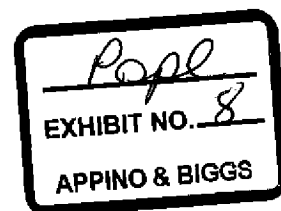
Arkansas River Replacement Plan Applicant:

The purpose of this letter is to provide you with guidance in preparing and specific requirements for information to be included in your application for an **ARKANSAS RIVER REPLACEMENT PLAN** (REPLACEMENT PLAN) for the period April, 2012 through March, 2013 under the provisions of the **AMENDED RULES AND REGULATIONS GOVERNING THE DIVERSION AND USE OF TRIBUTARY GROUND WATER IN THE ARKANSAS RIVER BASIN, COLORADO (AMENDED USE RULES)**. ***Significant additions or revisions in this letter are denoted by bold, italicized and underlined font. Please pay particular attention to those portions of the letter.***

1. **Under the provisions of the Amended Use Rules, an application for approval of a Replacement Plan to divert tributary ground water described in Rule 14 of the Amended Use Rules must be submitted by each Well User or entity acting on behalf of Well Users (Association). The Replacement Plan application must contain the items listed under Rule 14 of the Amended Use Rules as well as the information discussed in the following paragraphs.**
 - a. A submission schedule for the Replacement Plan application is attached at **Enclosure 1**. An explanation of each item is provided in the following paragraphs.
 - b. Seven complete copies of the Replacement Plan application with all supporting documents must be submitted to the Division Engineer no later than **March 1, 2012**, the submission date required by the Amended Use Rules.
 - c. The initial review of the Replacement Plan application will be done by the Division Engineer's office. Once the initial review is complete, comments about additional information needed to finalize the review will be sent to the Applicant.
 - i. All communications concerning the Replacement Plan application must be directed to the Division Engineer's office.
 - ii. Copies of subsequent revisions must also be submitted to the Division Engineer's office.
2. Each Replacement Plan application must contain the listings of wells described in this letter. Wells that are, or should be, fully covered by a Substitute Water Supply Plan (SWSP) or wells that are not subject to the Amended Use Rules (see Enclosure 2) cannot be included in a Rule 14 Pre-1986 Replacement Plan. A few wells are partially covered by a Rule 14 Pre-1986 plan and partially by an SWSP such as Booth Well Association wells that irrigate Booth historic dry-up lands and non-Booth

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January 4, 2012

Page 2 of 8

historic dry-up lands. This type of coverage is appropriate and can be approved on a case-by-case basis.

3. **ENCLOSURE 2** reflects current Statutes and Policies related to SWSPs. Please review Enclosure 2 carefully to determine whether a well qualifies for a Rule 14 Pre-1986 Replacement Plan.
4. **ENCLOSURES 3 AND 4 list all information to be included with the Replacement Plan** application as required by Rule 14 of the Amended Use Rules as well as the additional information required by the Division Engineer in order to evaluate each Replacement Plan application.
 - a. Enclosure 3 includes clarification of the information required for Tables 1 and 2.
 - b. The required information described in Enclosures 3 and 4 must also be submitted as electronic database or spreadsheet files.
 - c. A data file with the blank formatted tables from Enclosures 3 and 4 will be provided to Replacement Plan Applicants upon request. The files can be provided in either Microsoft Access or Microsoft Excel format.
 - d. **The Replacement Plan application must provide all information shown in Table 1.**
 1. **All wells must be identified using the Farm Group, Farm Unit, Structure Identification Number (IDENT) and Suffix (ID SUF) assigned by the Division. The Division is working through some updates and revisions to Farm Group assignments to be used for the 2012 Plan Year and will provide information on revisions by January 31, 2012 as described in paragraph 2.**
 2. **Electronic files listing all wells in the 2011 Rule 14 Pre-1986 Plans will be provided to Well Users/Associations and their Consultants. These files will include information necessary to complete Table 1 for the new plan year for all, except for new wells that may be added to each plan. This information is to be used to assure consistency between existing designations and the new Rule 14 Replacement Plan applications.**
 - e. Once Table 1 is received by the Division Engineer, a list will be returned to the Replacement Plan Applicant. The list will summarize the data currently on file for each of the wells proposed to be included in the Replacement Plan.
 1. The data will include information on ownership, active/inactive status as defined by the Amended Rules Governing the Measurement of Tributary Ground Water Diversions Located in the Arkansas River Basin (Amended Measurement Rules), Measurement Method for each associated Meter and the Farm Group/Unit, Depletion Factor(s) and User Group assignments.
 2. All data in that list should be carefully reviewed by the Replacement Plan Applicant and/or Consultant. Any corrections should be noted with a copy returned to the office of the Division Engineer as soon as possible and no later than the deadline specified in the initial review (Feedback) Letter. This information must be returned to the Division Engineer before final review and Replacement Plan approval can take place.
 - f. The Replacement Plan must contain projected monthly pumping for each well.
 - i. The projected monthly pumping shown in Table 2a must be for the entire 2012 Plan Year (April 2012 to March 2013).
 - ii. For wells with more than one meter, pumping must be shown for each meter.
 - iii. The information in Table 2a, along with the information in Table 2b discussed under paragraph 5 below, will be used as described in paragraph 5 to compute Stream Depletions that must be replaced by the proposed Replacement Plan during the Plan Year and during the Post-Plan Period.
 1. The Division Engineer intends to use this pumping information to monitor the performance of each Replacement Plan and to identify noncompliance with the provisions of the approved Replacement Plan as required by Rule 10 of

the Amended Use Rules.

5. **Under the provisions of the Amended Use Rules, Rule 13 data must be provided to the** Division Engineer no later than February 1, 2012. The following paragraphs detail the specific requirements for Well Users or Associations to collect, review and forward Rule 13 information.
- a. The actions that each Well User or Association has taken to assure that the Rule 13 information for each well submitted in conjunction with the 2012-2013 Replacement Plan application is correct and up-to-date must be described and included in the Plan Application.
 - b. The Well User or Association must include in their own Annual Membership Renewal mailings (or other annual Pre-Plan Development mailings) the requirement that members verify the planned uses for each well, particularly any changes in the following:
 - i. The distribution system supplied by the well or through the meter,
 - ii. Irrigation methods,
 - iii. Sole source or supplemental supply status,
 - iv. Any other information that may affect the depletion factor assigned to each well
 - v. Owner or user.
 - c. Deadlines for information required under Rule 13 of the Amended Use Rules:
 - i. Rule 13 Information for continuing Plan Members' wells that have none of the conditions listed in 5.b. need only be submitted in electronic format by February 1, 2012.
 - 1. Rule 13 information must be complete and in the format shown in Tables 1 and 2b (see Enclosure 3).
 - ii. For wells being added to the 2012-2013 Replacement Plan, complete Rule 13 information must be provided to the Division Engineer as soon as it is determined that a well will be added. A completed and signed Ground Water Use Information Form must also be delivered to the Division Office no later than February 15, 2012.
 - iii. Complete Rule 13 information for continuing Plan Members' wells with changed conditions as described above may be furnished in electronic format by February 15, 2012 and via a Ground Water Use Information Form signed by the Well Owner/User.
 - d. Special Depletion Factor Requirements:
 - i. Oxford Farmers Ditch and Rocky Ford High Line only: Depletion factors for headgate wells will be set at the values derived from the Hydrologic-Institutional Model (H-I Model) to reflect the use of this water as an integral part of the surface supply.
 - ii. Depletion factors for wells used to irrigate lands designated as "Dry-Up" will be set at either:
 - 1. The depletion factor or consumptive use value specified in the decree or,
 - 2. For wells used on dry-up lands without a decreed depletion factor, the on-farm consumptive use factor used to compute credit for the ditch but no less than 65% for flood irrigation, 85% for sprinkler irrigation and 100% for drip irrigation.
 - 3. Flood irrigation by supplemental wells will require the use of a 39% depletion factor for those wells subject to revised Appendix A.4 of the final decree in *Kansas v. Colorado*.
6. **Using actual pumping that occurred from June 1, 1996 through December, 2011;** estimated pumping for January, February and March, 2012 from each currently approved Replacement Plan; and the projected pumping shown in **Table 2a**, with the depletion factors shown in **Table 2b**, the stream depletions caused by that pumping should be computed for wells subject to Rule 3, Rule 4 and Rule 5 of the Amended Use Rules and the total stream depletions under each Rule should be provided by month for each affected reach. Applications for the 2012 Plan Year must also include either electronic copies of modeling files or hard copies of model outputs showing the derivation of the stream depletions.
- a. See item 3.b.i.2) regarding provision of data from the current Plan Year (2011-2012) for the

January 4, 2012

Page 4 of 8

- Applicant's use in completing this requirement. An example of the format to be used to provide the required data is included in **Tables 3a through 6 of Enclosure 4**.
- b. Note that a breakdown of stream depletions expected to be caused by pumping prior to the 2012 Plan Year and additional stream depletions expected to result from proposed pumping during the 2012 Plan Year is required.
 - c. For RULE 5 WELLS located on TRIBUTARIES to the ARKANSAS RIVER:
 - i. The tributary of the Arkansas River where the stream depletions will actually occur from the pumping of wells covered by Rule 5 of the Amended Use Rules must be identified for each Rule 5 well. Tributaries should be identified where a local call will require the delivery of replacement water to the tributary rather than directly to the Arkansas River. Rule 5 wells that have been ordered to provide replacements on tributary streams should be modeled using their actual and projected pumping to quantify depletions occurring on the tributary. The source of replacement water that will be used by the Plan and the timing of the deliveries must also be provided in these cases. **Table 6 of Enclosure 4** provides the format for supplying this information.
 - 1. All wells that have replacement requirements on a specific tributary should be grouped into a single User Group. A separate Table 6 should be prepared for each tributary.
 - 2. The remaining Rule 5 wells in the Replacement Plan application that are required to provide replacements directly to the Arkansas River may be grouped as in previous years with each User Group summarized in a separate Table 6.
 - d. If a model other than Glover or Stream Depletion Factor (SDF) is used for Rule 5 wells, it should be described in sufficient detail to allow an evaluation of the model to determine if it is adequate for determining stream depletions. This description should include the river reach or location where the depletions occur and where replacement water should be provided.
 - e. Oxford Farmers Ditch and Rocky Ford High Line: Headgate wells used as a supply source to irrigate all acreage under the ditch service area should be modeled using an appropriate SDF or Glover Analysis to reflect the difference between the timing of the depletions from this type of well versus on-farm wells under that same ditch.
 - f. Wells on Fountain Creek: Use of the Fountain Creek Transit Loss Model is required for all sources of replacement water provided on Monument Creek or Fountain Creek or delivered to the Arkansas River via Monument Creek and Fountain Creek.
 - g. In order for the Division Engineer to evaluate the modeling used in each Replacement Plan application to determine stream depletions, applications for the 2012 Plan Year must also include either electronic copies of modeling files or hard copies of model input and output showing the derivation of the stream depletions.
7. **Information about all sources of augmentation water to be incorporated into the plan** must be addressed in the Replacement Plan application. Sources of replacement water for Rule 14 Pre-1986 replacement plans subject to paragraph 4 above must meet the criteria described in Appendix G.1 of the final decree in *Kansas v. Colorado*.
- a. A copy of all leases or contracts for each source of replacement water used in the proposed Replacement Plan should be provided with the Replacement Plan application. If copies of these documents are not available at the time of the Replacement Plan application, the Division Engineer may grant an extension if requested is made in writing in the plan application.
 - b. Replacement credit shall not be allowed for any source of water available from the Dakota and/or Cheyenne aquifers unless pursuant to a decree authorizing the use of said water for augmentation purposes (see Appendix G.2 of the final decree in *Kansas v. Colorado*).
 - c. Furthermore, special water inputs to the Hydrologic-Institutional (HI) Model will be limited

January 4, 2012

Page 5 of 8

- to replacement sources for those wells represented in the HI Model. Replacement sources must be available in the proper amount and location and the timing of replacement water must be planned and administered such that carry-forward depletions will be no larger than 50% of the following month's projected replacement credits for in-state replacement. Additionally, for each plan with stored sources of replacement water, releases will be initiated by no later than the 5th of the following month to ensure complete replacement of the carry-forward deficit. The Division Engineer or designated representative will require stored replacement water to be released by the plan proponent to eliminate excess depletions.
- d. The application for each Replacement Plan which uses a surface water right as a source for augmentation water which has not been approved in a previous Replacement Plan must include both an analysis to support the recommended/requested historic consumptive use for each ditch AND an analysis to support the method recommended/requested to limit the amount of augmentation credit allowed for each ditch in order to prevent an expansion of use.
- i. The analysis to support each consumptive use factor should use, if applicable, the farm efficiencies used in the H-I Model. Information about the H-I Model can be obtained from Mary Halstead or Kelley Thompson in the State Engineer's Office (303-866-3581).
 - ii. The application for each Replacement Plan which uses one or more surface water rights as sources for augmentation water must contain mapping consistent with the provisions of Appendix B.3 of the final decree in *Kansas v. Colorado*, which identifies the parcels of previously irrigated land which will be dried up during the Plan Year and are being proposed for use as a source for augmentation credit for each surface water right. The deadline for providing the mapping or the historic consumptive use analysis figures for the 2012-2013 Plan Year, is March 1, 2012. This mapping can be placed on the DWR ftp site in lieu of inclusion in the hard copy submittal. However failure to meet the March 1, 2012 deadline may result in disqualification of the surface water source for use in the 2012 Plan.
 1. For replacement sources used to replace depletions within the H-I Model Area the plan application must be in conformance with Appendix B.3 of the final decree in *Kansas v. Colorado*, "Administration of Parcels for Augmentation Credit" agreement. This agreement includes specific criteria for parcel eligibility, mapping standards, parcel evaluation and administration of dry-up parcels.
 2. For surface water rights outside of the H-I Model area, which the replacement plan uses as sources for augmentation water, the second paragraph of Section B and all applicable portions of Sections C-F in the "Administration of Parcels for Augmentation Credit" agreement apply.

8. 2012 Plan Year Compact Compliance Requirements

The Division of Water Resources will perform a run of the H-I Model to evaluate State Line Depletions for 2002-2011 as described in Appendix A.1 of the final decree in *Kansas v. Colorado*. Pending these model results, due in late March 2012, each Replacement Plan to which Paragraph 7 applies must indicate the source(s) of water to be used to repay its share of any State Line shortfall, if the H-I Model shows that a shortfall exists in the manner described in Appendix A.2 of the final decree in *Kansas v. Colorado*. No shortfall is anticipated for this model run, but each Replacement Plan shall be notified if this situation occurs in March 2012. This paragraph applies to AGUA, CWPDA, and LAWMA.

9. In order to evaluate the adequacy of presumptive stream depletion factors as required by Rule

January 4, 2012

Page 6 of 8

4.3 of the Amended Use Rules, to verify the appropriateness of the factors assigned, and to determine the accurate amount of acreage irrigated with ground water in accordance with Appendix B.1 of the final decree in Kansas v. Colorado, the Division Engineer intends to annually verify information on approximately 20% of all Farm Units in Arkansas River Replacement Plans that are within the alluvial aquifer of the Arkansas River. The Farm Units selected for verification for this year are listed at **Enclosure 5**. If the necessary information cannot be obtained, the associated wells will not be included in the Arkansas River Replacement Plans that are approved for the upcoming Plan Year.

10. Provision of replacement water for stream depletions that occur after the 2012-13 Plan Year will be required of all Rule 14 Pre-1986 Replacement Plans.

- a. **The amount of renewable or fully consumable replacement water to be committed to the current Replacement Plan will be determined after applications are submitted and prior to Replacement Plan approval.**
 - i. **Each Replacement Plan application is to include the estimated quantity of stream depletions expected to occur beyond March 2013 for which the Replacement Plan will be responsible. The computations to support this estimate are to be provided in the Replacement Plan application and should show the projected stream depletion by month for the first five years after the plan expires with no additional pumping.**
 - ii. **Applicants shall also provide an analysis showing the average monthly amount of replacement credit estimated to be available from each renewable source of replacement water committed to the post-pumping depletions and any future accretion credits from time-forward Fry-Ark return flows, recharge deliveries or other similar credits. This analysis shall be done by month for the first five years after the plan expires and shall provide a comparison of post-plan depletions and replacements to show net un-replaced stream depletions by month.**
 - iii. **The net stream depletions that are not estimated to be able to be replaced by renewable sources or future accretions shall then be used as a basis to develop a specific plan for meeting these obligations. This plan may consist of securing stored supplies, prepaying for future return flows, developing additional accretion credits through recharge, leasing or purchasing additional replacement water rights to meet post-plan depletion obligations or other plans approved in advance by the State Engineer. Financial security deposits shall no longer be used to fulfill this obligation and existing financial security deposits will be released upon approval of the 2012-13 plan.**
 - iv. **Specific elements of the above plan are likely to become conditions of approval in the 2012-13 Replacement Plan approval and therefore require that the plan description provide detail about specific goals of the plan including timelines for ensuring resources are in place by no later than November 1, 2012 to cover depletions occurring past March 31, 2013.**

11. The Well User of any well proposed to be included in a 2012 Replacement Plan that was included in a different Replacement Plan during previous Plan Years, must have completely resolved all indebtedness with previous Replacement Plans prior to being approved for inclusion in the new Replacement Plan.

- a. An Association with 2011 Members who have enrolled with another Association for the 2012 Plan Year without resolving 2011 Plan indebtedness should provide a list of these Member Wells to the Division 2 Office with the 2012-2013 Replacement Plan Application, or as soon as possible after the end of the 2011-2012 Plan Year, but no later than April 15, 2012.
 - i. A separate list of Farm Units and wells added to or deleted from a Replacement Plan shall be included in the new Replacement Plan application.
 - ii. Upon request, the Division will provide information about wells previously included in another Replacement Plan that are being added to a 2012 Plan Year Replacement

January 4, 2012

Page 7 of 8

Plan.

- b. Replacement Plans are responsible for all Post-Plan depletions that are attributable to pumping by Farm Units and wells that were included in previous Replacement Plans that are later included in another Replacement Plan unless otherwise approved by the Division Engineer and both Replacement Plan Administrators.

12. Some wells in the plan applications may be irrigating lands from which surface supplies have been removed pursuant to an adjudicated water right change including a change in type of use. This practice is sometimes termed "re-irrigation". To the extent that these wells re-irrigate lands historically irrigated by the changed surface water rights and the decrees for the surface water rights change require a Water Court approved plan for augmentation or an SWSP approved pursuant to Colorado Revised Statutes 37-92-308 and/or prohibit approval under a Rule 14 Replacement Plan as an option, replacement of stream depletions caused by pumping beyond March 31, 2012 shall not be allowed in a pre-1986 Rule 14 Plan. These wells must make provision to continue to pump from April 1, 2012 forward under a plan approved by Water Court or pursuant to a SWSP approved under Colorado Revised Statutes 37-92-308.

- a. However, these wells may continue to be included in a pre-1986 Rule 14 plan beyond April 1, 2012 under one of the following conditions:
 - i. When irrigation of historically irrigated lands continues to occur with the changed surface water rights and the wells are being used as a supplemental source of supply and surface water deliveries will be at least half of the irrigation supply.
 - ii. When the decree changing the surface water rights to another use do not require a Water Court approved plan for augmentation or a SWSP approved pursuant to Colorado Revised Statutes 37-92-308 and specifically allow approval under a Rule 14 Replacement Plan as an option or are silent on whether approval under a Rule 14 Replacement Plan is an option. Any wells approved to pump in a pre-1986 Rule 14 Plan pursuant to this option are encouraged to seek a change of water right to confirm the appropriate depletion factor to be applied in a pre-1986 Rule 14 Plan when the wells are used as the sole source of supply to the historic lands. Owners of wells that meet the criteria of this subparagraph may continue to include their wells in a pre-1986 Rule 14 Plan, but should be on notice that approval is subject to acceptance of the depletion factors described in Paragraph 4.d.ii above. Any dispute of these depletion factors by an owner of the wells or by an objecting party with a claim of injury to another water right shall be cause to require the well owner to seek a determination of the proper depletion factor to be used when irrigating historically irrigated lands with the wells as a sole source of supply by Water Court through a change of water right application and may result in an order to immediately curtail use of the well or wells pending the Court's determination or pursuant to a SWSP approved pursuant to Colorado Revised Statutes 37-92-308.

13. Revised Appendix A.4 to the decree in Kansas v. Colorado was re-titled as "AMENDED AGREEMENT REGARDING THE COLORADO USE RULES, PDF EVALUATION, IMPLEMENTATION PROCESSES, AND RELATED MATTERS, AND NOT TO TERMINATE THE OFFSET ACCOUNT RESOLUTION" and was included in the Expectations Letter for the 2010-11 Plan Year. Key components that should be reviewed by each plan applicant include:

- a. The State and Division Engineers will implement procedures to increase PDF values for diversions of ground water used as a supplemental supply for flood and furrow irrigation by well users who do not have a reasonably adequate surface water supply for the acreage irrigated in accordance with Rule 4.2 of the Use Rules.
- b. Rule 6 of the Use Rules limits the number of years that certain water rights which have not been decreed for augmentation use can be used as a source of augmentation water in a Rule 14 Plan. The State and Division Engineers will require that the well user or plan proponent file an application for a change of water right(s) approving the use of the water right for

January 4, 2012

Page 8 of 8

augmentation use if the water right has been included as a source of augmentation water in any Rule 14 Plan for a total of three years. For water rights included in Rule 14 Plans prior to the Appendix A.4 agreement for three years or more that have not obtained a change of water right to include augmentation, the State and Division Engineers provided notice in January 2010 through written communication, identifying certain sources that are subject to this criteria. An application for a change of water right for these identified water rights must be filed by January 31, 2012 in order to be used in the 2012-13 Rule 14 Plans or in any subsequent plan. **Applicants should provide the Water Court case numbers for the associated applications as part of their 2012-13 Plan Submittal.**

- c. The State and Division Engineers will use their enforcement authority to minimize the need for estimation of monthly pumping amounts due to failure to report monthly meter readings or incorrectly or falsely reported monthly pumping values supplied by well owners or entities acting on behalf of well owners.
- d. Dry-up parcel nomination must be done in accordance with Appendix B.3 to the final decree in *Kansas v. Colorado* and subject to the deadlines described therein and included in this Plan Expectations Letter.

I am looking forward to working with you to prepare Replacement Plans that meet the requirements that we have to satisfy and are as easy as possible for the Well User, the Associations and Division 2 staff to implement. Thank you for your cooperation and compliance with the Amended Use Rules and Amended Measurement Rules. Your efforts are greatly appreciated.

Sincerely,



Steven J. Witte, P.E.
Division Engineer
Colorado Division of Water Resources

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Other Individuals/Groups involved with Replacement Plan applications:

DWR Div. 2: SJW, BWT, ANS, JKZ, JLP
DWR SEO: Mary Halstead, Heidi Frey
Kansas DWR: Kevin Salter, Dale Book
Eve McDonald, AG's Office

ENCLOSURES

TITLE	NO. OF PAGES
1. SUBMITTAL SCHEDULE FOR PLAN APPLICATIONS FOR 2012 PLAN YEAR	1
2. DETERMINING ELIGIBILITY FOR RULE 14 PRE-1986 PLANS.....	2
3. WELL INFORMATION TABLES REQUIRED FOR PLAN APPLICATIONS	
a. CLARIFICATIONS AND CHANGES	4
b. SPECIFIC TABLES REQUIRED WITH RULE 14 PRE-1986 PLAN APPLICATIONS	
i. TABLE 1 - WELLS INCLUDED IN ARKANSAS RIVER REPLACEMENT PLAN (RULE 14 PRE-1986)	1
ii. TABLE 2A - PROJECTED PUMPING FOR WELLS IN TABLE 1	1
iii. TABLE 2B -- DEPLETION FACTORS FOR WELLS IN TABLE 1	1
4. MODELING INFORMATION TABLES REQUIRED FOR PLAN APPLICATIONS	
a. SPECIFIC TABLES REQUIRED WITH RULE 14 PRE-1986 PLAN APPLICATIONS	
i. TABLE 3A/3B - PROJECTED STREAM DEPLETIONS (RULE 3 WELLS)	2
ii. TABLE 4A/4B - PROJECTED STREAM DEPLETIONS (RULE 4 WELLS, GRAY AREA).....	2
iii. TABLE 5A/5B - PROJECTED STREAM DEPLETIONS (RULE 4 WELLS, BLUE AREA)	2
iv. TABLE 6 - PROJECTED STREAM DEPLETIONS (RULE 5 WELLS).....	1
PREPARE ONE TABLE FOR EACH TRIBUTARY	
v. TABLE 7A/7B - REPLACEMENT WATER REQUIREMENTS.....	2
5. 2011-2012 IRRIGATED ACREAGE VERIFICATION LIST.....	5

ENCLOSURE 1
SUBMITTAL SCHEDULE — 2012 PLAN YEAR

- JANUARY 16, 2012** Submit dry-up affidavits for 2011 irrigation dry-up parcels.
- FEBRUARY 1, 2012:** Submit information required by Rule 13 of the Amended Use Rules for each well to be included in the Arkansas River Replacement Plan for 2012 Plan Year. See Enclosure 3 for specific requirements.
- FEBRUARY 15, 2012:** Submit a Form 7.1 "Notice of Reactivation" for wells being re-activated for the 2012 Plan Year.
- MARCH 1, 2012:** Deadline for submission of Replacement Plan applications for approval to divert tributary Ground Water as described in Rule 14 of the Amended Use Rules. Applications must be submitted by each Well User, or by a Well Users' Association (Association) acting on behalf of Well Users. **The submittal must include GIS information and mapping regarding parcels proposed for dry-up during the 2012 irrigation season.**
- MARCH 15, 2012:** Deadline for Associations to notify the Division Engineer's Office of former Members who are in arrears on moneys owed to the Association for previous Plan Year membership.
- MARCH 23, 2012:** Final date to make any dry-up parcel corrections. GIS mapping must be provided by Division 2 to Kansas by April 15, 2012.
- APRIL 1, 2012:** Begin 2012 Plan Year
- JUNE 1, 2012:** Deadline for finalizing commitments of Replacement Water.